

Page 1

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 22-10964-mg

4 Adv. Case No. 22-01139-mg

5 - - - - - x

6 In the Matter of:

7

8 CELSIUS NETWORK LLC,

9

10 Debtor.

11 - - - - - x

12 CELSIUS NETWORK LIMITED et al.,

13 Plaintiffs,

14 v.

15 STONE et al.,

16 Defendants.

17 - - - - - x

18

19 United States Bankruptcy Court

20 One Bowling Green

21 New York, NY 10004

22

23 November 23, 2022

24 10:00 AM

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Page 2

1 B E F O R E :  
2 HON MARTIN GLENN  
3 U . S . B A N K R U P T C Y J U D G E  
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Page 3

1 HEARING re Adversary proceeding: 22-01139-mg Celsius Network  
2 Limited et al v. Stone et al  
3 Case Management Conference Regarding Motion for a  
4 Preliminary Injunction. (Doc ## 20 to 30)

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Page 5

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11 UDAY GORREPATI

12 TAYLOR HARRISON

13 MIKE LEGGE

14 MATTHEW W. SILVERMAN

15 DANIEL STONE

16 CARL N. WEDOFF

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1 P R O C E E D I N G S

2 CLERK: All right. Starting the recording for  
3 November 23rd, 2022 at 10:00 a.m., calling Celsius Network  
4 Limited et al versus Stone et al, case number 22-1139.

5 Mr. Chapman, if you could unmute and give your  
6 appearance, please.

7 MR. CHAPMAN: Yep. Good morning. Dean Chapman,  
8 Akin Gump for the debtors.

9 CLERK: Okay. Are you going to be the primary  
10 person speaking or is someone else?

11 MR. CHAPMAN: My colleague, Mr. Hurley, Mitch  
12 Hurley who I don't think is on yet, will be the primary on  
13 this, but I'm here if you need me.

14 CLERK: Okay. Thank you.

15 All right. You can pause the recording for now.

16 (Recess)

17 CLERK: Good morning, Mitch. If you could unmute  
18 and give your appearance for the record, please.

19 MR. HURLEY: Good morning. Mitch Hurley with  
20 Akin Gump Straus Hauer & Feld on behalf of the debtors.

21 CLERK: Okay. Thank you.

22 All right. The party with the 312-862-3555  
23 number, if you could just identify yourself, please. All  
24 right. Again, the party with the 312-862-3555 number.

25 Okay. One last time, the party with the 312-862-3555

Page 7

1 number, could you please identify yourself. Right. Again,  
2 party with the 312-862-3555 number, can you unmute and  
3 identify yourself, please?

4 MS. WILLIS: Good morning. Good morning, Deanna.  
5 Can you hear me? It's Morgan from Kirkland.

6 CLERK: Okay. Morgan, just give me your full name  
7 so I make sure I spell it correctly.

8 MS. WILLIS: Willis, W-I-L-L-I-S.

9 CLERK: Two Ls. Okay. Great. Thank you.

10 MS. WILLIS: Thank you.

11 CLERK: All right. Please pause the recording.

12 (Recess)

13 CLERK: All right. Kyle, if you could unmute and  
14 give your appearance for the record, please. Sorry. I  
15 can't hear you.

16 MR. ROCHE: My apologies. This is Kyle Roche on  
17 behalf of Defendants KeyFi and Jason Stone.

18 CLERK: Okay. Thank you.

19 Judge, would you like to wait until the -- one of  
20 the U.S. trustees joins, or do you want to get started?

21 THE COURT: Let's -- I don't know if anybody from  
22 the UST will be joining. Let's wait another two minutes.  
23 Is that okay?

24 CLERK: Okay. Yeah. Shara Cornell said she  
25 would.

1 THE COURT: Okay. Let's --

2 CLERK: Okay.

3 THE COURT: Let's wait then.

4 CLERK: All right. Thank you.

5 All right. Please pause the recording.

6 (Recess)

7 CLERK: The party with the 202-934-4040 number, if  
8 you could unmute and just identify yourself.

9 MS. CORNELL: Shara Cornell. I'm from the office  
10 -- hi. This is Shara Cornell on behalf of the Office of the  
11 United States Trustee.

12 CLERK: Okay. Shara, are you going to be joining  
13 separately with video or --

14 MS. CORNELL: If I'm able to get my video up and  
15 running, I will.

16 CLERK: Okay.

17 MS. CORNELL: I don't anticipate needing to speak  
18 today. I'm probably just listening, but I'm working on  
19 getting that set up.

20 CLERK: Okay. And --

21 MS. CORNELL: I apologize for the delay.

22 CLERK: No problem. I wasn't able to access my e-  
23 mail after I e-mailed you. Is Brian Masumoto going to be  
24 joining as well, or --

25 MS. CORNELL: No. It's just going to be me today.

1 CLERK: Okay. Thank you.

2 MS. CORNELL: Thank you.

3 CLERK: Judge, would you like to get started?

4 THE COURT: Yes, I would. Thank you, and good  
5 morning to everybody. This is Judge Glenn.

6 I set the hearing for this conference in the  
7 Celsius versus Stone and KeyFi, Inc. adversary to deal with  
8 scheduling issues, so the motion to dismiss filed by the  
9 defendants is set for hearing on December 5. We have a  
10 very, very long Celsius docket on December 5th.

11 We'll hear the motion to dismiss on that day, but  
12 the plaintiff has filed a motion for preliminary injunction,  
13 and I wanted to question Counsel whether -- what they  
14 anticipate with respect to that preliminary injunction  
15 hearing, which is in all likelihood going to have to be  
16 moved. I will not hear -- I will not have an evidentiary  
17 hearing on December 5.

18 But let's start by -- Mr. Hurley, if you're taking  
19 the lead, what if any discovery is you undertaking and what  
20 witnesses do you expect to call in your case in chief on the  
21 preliminary injunction? Go ahead, Mr. Hurley.

22 MR. HURLEY: Good morning, Your Honor. Again for  
23 the record, Mitch Hurley with Akin Gump on behalf of the  
24 debtors.

25 So the parties are engaged in discovery in plenary

1 action. We have not discussed specific discovery related to  
2 the motion for preliminary injunction. From the debtor's  
3 perspective, we don't think that discovery specific to the  
4 preliminary injunction is necessary. We have included with  
5 our motion declarations from a couple of witnesses from  
6 Celsius. For the most part, those witnesses are putting  
7 into evidence material from Etherscan, which is a kind of  
8 software that allows tracing of transactions on the  
9 blockchain.

10 And so while we of course would have those  
11 witnesses available for any hearing for cross examination,  
12 if Mr. Roche and his side want to cross, it wasn't  
13 anticipated, at least by our side, that there would have to  
14 be a material amount of evidence at the hearing itself other  
15 than offering the declarations. And again, if Mr. Roche had  
16 some cross, I suppose we'd make -- not suppose. Of course  
17 we'd make time for that. But it did not -- it's not a kind  
18 of hearing that we at least anticipated would require a lot  
19 of time with evidence. It would be more about arguing the  
20 (indiscernible).

21 THE COURT: All right. Are you seeking to take  
22 the depositions of either Mr. Stone or anyone else in  
23 relation to KeyFi?

24 MR. HURLEY: Not in advance of the preliminary  
25 injunction hearing, Your Honor. Certainly in the course of

1 discovery in the case, we will expect to take depositions,  
2 including of Mr. Stone, and I'm sure Mr. Roche is going to  
3 want to take depositions as well, but we had not -- in our  
4 view, it's not necessary to take those depositions in  
5 advance of the hearing on the preliminary injunction.

6 THE COURT: All right. Mr. Roche, what if any  
7 evidence do you anticipate offering at the preliminary  
8 injunction hearing?

9 MR. ROCHE: We haven't fully committed to this  
10 yet, but we anticipate having Mr. Stone testify on behalf of  
11 both KeyFi and himself relating to the property at issue and  
12 also relating to the action that was filed prior to the  
13 initiation of the bankruptcy proceedings in New York Supreme  
14 Court concerning the property and the relevant contracts at  
15 issue in this case while we're -- the motion to dismiss is  
16 still pending.

17 KeyFi -- both KeyFi and Stone have counterclaims  
18 against Celsius, so those claims would be relevant to the  
19 legal analysis of whether or not an injunction in effect in  
20 part seeks prejudgment attachment of certain assets is  
21 appropriate.

22 So I believe at this time, it will just be Mr.  
23 Stone. There may -- we may have an expert, but I think  
24 that's unlikely at this time.

25 MR. HURLEY: Your Honor, I guess I should've

1 pointed out --

2 THE COURT: Just a second.

3 MR. HURLEY: -- that we have not --

4 THE COURT: Mr. Hurley, just stop. I'll tell you  
5 when to respond, okay?

6 Mr. Roche, an expert on what topic? On what  
7 subject?

8 MR. ROCHE: Right. Just the only -- the only  
9 expert testimony that I could see potentially being helpful  
10 for the Court is just the tracing of the transactions or any  
11 discussion on the Staked ETH at issue, but I think that is  
12 unlikely in part because Mr. Stone himself is an expert on  
13 most of these issues and I think can explain to the Court  
14 the series of events at issue in the preliminary injunction  
15 and at issue in both this case and the case in New York  
16 Supreme.

17 THE COURT: So it's the Court's practice for any  
18 trial, whether preliminary injunction trial or otherwise, to  
19 have the direct evidence of each side presented by  
20 declaration, so you will have to provide a declaration with  
21 Mr. Stone's direct testimony.

22 And what I want to do now is I want to deal with  
23 the scheduling of it. If you're -- if you intend to have an  
24 expert testify in opposition to the preliminary injunction,  
25 that expert's going to have to be identified promptly, and

Page 13

1 the expert report or direct testimony of the expert is going  
2 to have to be in written form and provided to Mr. Hurley and  
3 his colleagues, and I want to set the schedule for all of  
4 that.

5 If -- let me ask you, Mr. Hurley, in light of Mr.  
6 Roche's statement that he intends to use the direct  
7 testimony of Mr. Stone in opposition to the PI, do you wish  
8 to take his deposition in advance of the preliminary  
9 injunction hearing?

10 MR. HURLEY: Thank you, Your Honor. The  
11 opposition papers are due, I believe, on the 28th, and so --  
12 and I presume if Mr. Roche is going to offer testimony from  
13 Mr. Stone, he'd probably plan to do it in a declaration that  
14 he'd provide us at that time?

15 THE COURT: He's going to have to.

16 MR. HURLEY: Right.

17 THE COURT: He's going to have to. All of the  
18 testimony that Mr. Roche is going to offer in opposition --  
19 the direct testimony in opposition to the preliminary  
20 injunction is going to have be provided with the opposition.

21 MR. HURLEY: Right.

22 THE COURT: What is your view on taking his  
23 deposition then?

24 MR. HURLEY: I haven't seen a declaration yet.  
25 It's actually conceivable to me that even if he puts a

Page 14

1 declaration in, we might not need it. So if it was possible  
2 with the Court, I guess I'd like to reserve until I see it.  
3 But if the -- if you need an answer right now, I think, you  
4 know, to be -- out of an abundance of caution, I suppose we  
5 should reserve time to take a deposition.

6 THE COURT: Mr. Roche, do you wish to take  
7 depositions of the declarants in support -- who supported  
8 the preliminary injunction?

9 MR. ROCHE: Your Honor, I had not considered that  
10 prior to this hearing. I think what I would ask -- or what  
11 -- is for -- after we put in our opposition papers, which  
12 will likely just include, again, the declaration of Mr.  
13 Stone on Monday for Mr. Hurley and I to meet and confer and  
14 decide whether or not depositions are necessary, and let the  
15 Court know at that time.

16 THE COURT: Okay. Just -- I'm making some notes.  
17 Let me make clear I have no problem if you decide to do it  
18 the old-fashioned way, which is to not take the depositions  
19 but cross-examine the declarants at an evidentiary hearing.  
20 But -- so it's your -- I mean, I will set a deadline if  
21 you're going to take the depositions, when they have to be  
22 completed, and -- but if you decide -- the declarants need  
23 to be made available for cross-examination.

24 The preliminary injunction hearing will be a  
25 hybrid hearing. All of the principle -- all of the

1       witnesses and all of the lawyers for the parties will be  
2       conducting the hearing, will be present in my courtroom.  
3       There will be hybrid or a Zoom connection for any other  
4       parties.

5           Obviously the Celsius case, they're only --  
6       Celsius on the one hand and Stone and KeyFi as the parties  
7       to the adversary proceeding, they're -- there are countless  
8       parties in interest in the Celsius Chapter 11 case. Zoom  
9       hearings have ranged from, you know, 50 or 100 to as many as  
10      over 700, so there will be a Zoom access, but I will not  
11      permit the Zoom parties -- parties in interest to question  
12      witnesses or make arguments if they're not parties to the  
13      adversary proceeding. The preliminary injunction will be in  
14      the adversary proceeding.

15           It is, you know, at this stage hard. What I would  
16      hope is that you can complete all of the evidence and  
17      arguments in a single day. If -- what I'm going to do is  
18      set the hearing on the preliminary injunction for Wednesday,  
19      January 11th and Thursday, January 12th. It's a Wednesday  
20      and Thursday, January 11th and 12th. Hopefully it won't be  
21      necessary to have the hearing on the 12th, but I'm --  
22      depending on the number of witnesses and argument, I'm going  
23      to at least block those. Right now the 11th is already  
24      calendared for something else, but -- which is unlikely to  
25      happen, and I'll have to deal with that accordingly.

1                   For purposes of the preliminary injunction  
2 hearing, the parties are going to have to prepare a joint  
3 pretrial conference order. The template for pretrial  
4 conference orders that I use is on the Court's public  
5 website under my chamber's rules, and I expected it to be  
6 complete -- to be fully completed. It is -- and I'm going  
7 to require it to be filed by 5 p.m. January 4th, 2023. It  
8 is -- you'll look at the template. I mean, it will  
9 hopefully include stipulations to many of the facts that are  
10 -- that are not in dispute. You'll need to identify each  
11 exhibit that you intend to offer in your case in chief  
12 either for or in opposition to the preliminary injunction.

13                   Hang on just one second. I apologize for that  
14 interruption.

15                   All right. So when you look at the template, it  
16 requires a considerable amount of work. You're going to  
17 have to identify specifically the issues to be -- to be  
18 tried. Obviously they're set by the preliminary injunction  
19 motion and the opposition, but I'm going to leave it to you  
20 two to get that -- get that template, and you'll see that it  
21 does require considerable work.

22                   To be clear, I do not permit -- other than for  
23 exhibits used for impeachment, I do not allow either party  
24 to use any exhibits at a trial or in this case a preliminary  
25 injunction trial that have not been identified in the

1 pretrial conference order. Along with the -- that January  
2 4th date deadline, I'm going to require that the Court be  
3 provided with copies of all of the exhibits that either side  
4 has listed in the exhibit list.

5 That'll also be the deadline, if you -- well, you  
6 will have filed your declarations that you're using either  
7 in support of or in opposition to the preliminary  
8 injunction. If there are any other -- certainly you'll have  
9 -- you know, they'll -- if there's any change in your plans  
10 about number of witnesses, you need to identify them  
11 sufficiently ahead of time that either of you can take  
12 depositions if you wish.

13 I also -- the -- I'm assuming the briefs will be  
14 the briefs that are already filed by Celsius in support of  
15 the preliminary injunction and the opposition that's to be  
16 filed by the defendants. Any reply -- just give me a moment  
17 here to look at the schedule.

18 Mr. Hurley, if the opposition is due on November  
19 28th, I'll give you a week until December 5 at 5:00 p.m. to  
20 file any reply brief, and that should encompass all of the  
21 briefing for the preliminary injunction hearing.

22 Let me ask you first, Mr. Hurley, is there  
23 anything else that you think -- that I haven't raised so far  
24 that should be raised for purposes of this hearing?

25 MR. HURLEY: I don't believe so, Your Honor.

1 THE COURT: Okay. Mr. Roche?

2 MR. ROCHE: No, Your Honor.

3 THE COURT: Just give me a second.

4 MR. HURLEY: Your Honor, this may be on your  
5 joint PTO order, but do you anticipate opening or closings  
6 at the evidentiary hearing or just testimony?

7 THE COURT: Well, I guess -- I will allow  
8 openings. I will have read all the papers. Let me put it  
9 that way. I'll be fully prepared.

10 I certainly would permit each of you to make  
11 opening statements, but I think what may be more important  
12 is the closing arguments that you have, but I won't prevent  
13 either of you from making an opening statement. I will have  
14 read everything in advance, the direct -- you know, the  
15 declarations.

16 And I should say if you're -- any declarant should  
17 be present in the court for cross-examination. If there any  
18 -- if there's any deposition testimony that either side is  
19 designating, you'll see in the pre-trial conference order it  
20 calls for designations and cross-designations, but here it  
21 sounds to me there'll be a very limited number of witnesses.

22 I guess the one thing that I -- absolutely are --  
23 since you said, Mr. Roche, you may or may not call an  
24 expert, you know, you're going to have to do that pretty --  
25 you're going to have to line up your expert pretty quickly

Page 19

1 and put in -- put in his or her declaration, and the two of  
2 you will need to work out the depositions if there are going  
3 to be depositions.

4 The one thing from the Court's standpoint,  
5 everything absolutely has to be completed so that you have a  
6 complete pre-trial conference order. If you don't list a  
7 witness in the pre-trial conference order, he or she is not  
8 being -- is not testifying at the hearing. I require  
9 complete transparency of the evidence being offered in  
10 opposition.

11 The only thing you don't -- if there are -- if  
12 there are impeachment documents, you don't have to -- and if  
13 you're only using something for impeachment, I don't  
14 absolutely require that they be listed in the -- in the  
15 pretrial conference order, though generally, I must say  
16 people usually do. But -- and then it's only for  
17 impeachment purposes. If you try to use a document that's  
18 not listed in the pretrial order and you're not using it for  
19 impeachment, you're not going to use it.

20 MR. ROCHE: Understood.

21 THE COURT: So it's important that the -- that it  
22 be complete.

23 MR. HURLEY: Your Honor, may I ask --

24 THE COURT: Go ahead, Mr. Hurley.

25 MR. HURLEY: Sorry.

1 THE COURT: Go ahead.

2 MR. HURLEY: If I could ask two questions.

3 THE COURT: Sure.

4 MR. HURLEY: One is to the extent Mr. Roche does  
5 provide a declaration from an expert on the 28th, whether  
6 Celsius will have the ability to consider at least putting  
7 in an expert in rebuttal.

8 THE COURT: Yes. You're going to have to do it  
9 very promptly. Work out with Mr. Roche the timing of that.

10 The thing that I'm absolutely firm on is the  
11 January 4th, 5:00 p.m. deadline for submitting everything to  
12 the Court.

13 MR. HURLEY: Understood. Thank you.

14 Second question relates to the in-person  
15 appearances of witnesses.

16 THE COURT: Yes.

17 MR. HURLEY: A couple of the witnesses -- I know  
18 at least one would have to travel from a very great distance  
19 indeed to appear live, which obviously would be an expense  
20 for the estates. Is it -- is it possible for witnesses who  
21 are -- who would have to travel great distances to appear by  
22 telephone or by Zoom?

23 THE COURT: What's a great distance?

24 MR. HURLEY: So Dean, can you remind me where Ron  
25 Sabo is located?

1 MR. CHAPMAN: Yeah. He's in Portugal.

2 MR. HURLEY: Right. And Shiran may be in  
3 Israeli. He may be local. I'm not sure.

4 MR. CHAPMAN: He's in Israel, I believe.

5 MR. HURLEY: Yeah. So Israel and Portugal.

6 MR. CHAPMAN: He spends part of his time there.

7 THE COURT: What you should do, Mr. Hurley, is  
8 confer with Mr. Roche and see whether you can reach an  
9 agreement.

10 My strong preference is to have the witnesses in  
11 the courtroom. Over the course of the last two years --  
12 plus years, yes, I have had some entirely Zoom trials. I'll  
13 just say in the absence of an agreement with Mr. Roche, I  
14 will require the witnesses to be present in the courtroom.

15 If a witness appears -- is testifying by Zoom,  
16 which I have had happen, the ground rules that I've set is  
17 that the witness be fully onscreen and no lawyer with, you  
18 know -- other judges -- I have not had this problem but  
19 other judges have had this problem with Zoom witnesses where  
20 someone is purportedly coaching the witness. I want to be  
21 sure that a -- that no one else is within range, no one else  
22 communicates with the witness during his or her testimony.

23 I do not permit sharing a screen with the witness  
24 and exhibits, so the witness needs to have copies of any  
25 exhibits that are being used, and I need to have copies of

Page 22

1 all the exhibits, so it's unsatisfactory from the Court's  
2 standpoint when someone tries to share the screen, to put a  
3 document up and have a witness testify because the witness  
4 becomes a very small box, and I don't permit that.

5 But as I say, in the first instance, you need to  
6 try and reach an agreement with Mr. Roche. If you cannot  
7 reach an agreement on, you know, Zoom testimony of someone  
8 who is in Portugal or in Israel, then they'll have to be  
9 present in the Court.

10 MR. HURLEY: Understood, Your Honor.

11 THE COURT: Okay. Mr. Roche, do you have any  
12 questions?

13 MR. ROCHE: Your Honor, yes. Just I think prior  
14 to this hearing, I was under the understanding that there's  
15 a number of legal issues that don't involve the facts of the  
16 case as to why the preliminary injunction fails, but  
17 considering that the hearing will be at least in part a mini  
18 trial on the merits relating to some of the issues in this  
19 case, I do think we may want a few third-party depositions  
20 to proceed in the next month. And so my question is for the  
21 admission of deposition testimony, if we're able to take  
22 those depositions.

23 I think one of the individuals is still at  
24 Celsius. A couple of the individuals I could think of would  
25 not be. Would the Court permit the deposition testimony to

1 be entered as evidence at the hearing?

2 THE COURT: For any witness under your control,  
3 they have to appear at the hearing.

4 MR. ROCHE: Understood.

5 THE COURT: If a witness is not under your control  
6 and you wish to take a deposition for purposes of  
7 memorializing their testimony and offering their deposition  
8 transcript, you'll see from my pretrial conference order  
9 requires designations, cross-designations, and objections  
10 along with the pretrial conference order.

11 I think that this -- you know, your motion to  
12 dismiss will be heard on December 5. If you believe there  
13 are -- well, the evidentiary hearing relates to preliminary  
14 injunction. If you believe that there's testimony that you  
15 want to elicit and introduce relevant to the preliminary  
16 injunction hearing, you know, notice the depositions and --

17 Let me -- you know, my -- in light of what you're  
18 saying now, I'm going to require that all depositions must  
19 be completed on or before 5:00 p.m. December 22.

20 You know, I realize that all of you, and me, and  
21 my court staff all have issues about the holidays, but I  
22 want to -- what I don't want is that first week in January  
23 being consumed with discovery that should've been completed  
24 before. Even -- I'm setting the absolute deadline of  
25 December 22, but you -- the two of you need to confer sooner

Page 24

1 rather than later, and if there are depositions that either  
2 of you are going to take, get them scheduled and take them.  
3 I don't think either of you want your holidays taken up with  
4 preparing the papers in this case.

5 I just -- you know, if I could've gone forward  
6 with this in December, I would've gone forward with this in  
7 December. My calendar is extremely heavy in December and  
8 January as it is, but this is -- you know, a preliminary  
9 injunction is important, and we'll go forward with it.

10 But I think the important thing, Mr. Roche, is you  
11 and Mr. Hurley or his colleagues, whoever he wants you to  
12 deal with, that you work this out sooner rather than later.  
13 And the sooner you can schedule and take the depositions,  
14 the better that will be.

15 MR. ROCHE: Understood.

16 THE COURT: Mr. Hurley, is there anything you want  
17 to add?

18 MR. HURLEY: Well, Your Honor, it sounds like we  
19 may have a disagreement about the appropriate scope of  
20 discovery related to preliminary injunction motion. The  
21 facts that we rely on are actually quite narrow, and so if  
22 we have a disagreement of that kind, are there any special  
23 procedures you would recommend we follow for bringing a  
24 dispute like that to Your Honor's attention beyond what's in  
25 your individual chamber's rules?

1                   THE COURT: Sure. Let me be clear about it.  
2                   First off, the fact that you believe the issues for the  
3                   preliminary injunction are narrow -- and they may well be.  
4                   I can't say that at this point. If Mr. Roche in good faith  
5                   believes that there are defenses to the preliminary  
6                   injunction and that those require development of facts  
7                   through depositions, in all likelihood, I'm going to permit  
8                   him to take the depositions. I'm not going to decide a  
9                   preliminary injunction motion by deciding a discovery  
10                  dispute.

11                  With respect to discovery disputes, I do not  
12                  permit motions to compel. My procedures are the party  
13                  needing the assistance of the Court contacts my courtroom  
14                  deputy, and we arrange a very prompt and probably a Zoom  
15                  hearing. I often have those the same day or within a day or  
16                  two at the most of the request. Other than privilege  
17                  issues, I don't even -- I don't even want letter briefs.

18                  What -- I will listen to you both, and inevitably,  
19                  I'm able to decide that dispute very quickly. So that's the  
20                  -- how typically I operate. I usually have those  
21                  conferences for later in the day so as not to interfere with  
22                  any calendar item I have set. So that's available.

23                  What I do require is that the parties to the  
24                  discovery dispute have met and conferred and are unable to  
25                  resolve the dispute, and only then do they reach out to the

1 Court for the Court's assistance and direction.

2 So hopefully that's responsive to your question.

3 But I just -- I mean, just generally, I -- you know, unless  
4 I conclude that a party is off really on a fishing  
5 expedition, I will generally permit the party to take, you  
6 know, the discovery if they have a good-faith reason for  
7 believing that the facts are relevant to the issue that they  
8 expect to use in defense of the preliminary injunction.

9 Discovery in the case, we'll have a conference,  
10 and I'll get -- enter a case management and scheduling order  
11 for the case in general, and so this ought to be focused on  
12 the issues relevant to the preliminary injunction, and we'll  
13 -- you know, you'll work out -- well, the Court will set a  
14 schedule for the remaining discovery.

15 MR. HURLEY: Thank you, Your Honor. So I guess  
16 perhaps even more important than discovery itself is the  
17 timing, which was not really an issue I considered until Mr.  
18 Roche raised the possibility of third-party discovery.

19 So the way we've set the schedule now, he's going  
20 to put some declarations in, or one declaration maybe two,  
21 on the 28th. We have our reply on the 5th. And so I guess  
22 the concern I have is that he's going to be gathering  
23 evidence that apparently he may want to use in connection  
24 with a motion that we're not going to have seen or  
25 understood his view of the significance of until after we've

1 had a reply in.

2 THE COURT: Well, all I can say is, you know,  
3 November 8th -- November -- excuse me -- 28th was the  
4 deadline for him to submit the opposition. And, you know,  
5 he better do that, and he better -- if -- so you better have  
6 a very good reason why you're, you know, holding back on  
7 something you want to put in an opposition to the  
8 preliminary injunction. That's when your opposition is due.

9 And yes I've set -- you know, the deposition  
10 schedule I've given you, deadlines, is -- I'm assuming one  
11 or both of you are going to want to take depositions of the  
12 declarants.

13 But Mr. Roche, what discovery is it that you want?

14 MR. ROCHE: Yeah. So again, this is part -- the  
15 central issue of this case is -- there's I think two very  
16 important issues. One, what do the relevant contracts say  
17 concerning the profit share? And two, were certain  
18 transactions that Celsius has put at issue in this motion  
19 authorized? And so third parties, if there's individuals  
20 who we're aware of who have information relevant to the core  
21 question of whether or not the transactions that Celsius is  
22 now complaining about were authorized, then that would be --

23 THE COURT: Tell me -- no, tell me right now who  
24 those -- look. You're --

25 MR. ROCHE: Oh, yes. Connor --

1 THE COURT: No, stop. Stop.

2 MR. ROCHE: Sorry.

3 THE COURT: Your opposition is due in five days.

4 Okay? And tell me who those people are. If you don't know,  
5 you're not going on a fishing expedition to find out.

6 MR. ROCHE: Connor Nolan is the individual we  
7 identified in our -- as I understand it, he's still an  
8 employee of Celsius. We hadn't considered -- prior to this  
9 hearing this morning had not considered -- we were not  
10 planning on putting in a declaration from him because we  
11 haven't taken his discovery, or we haven't taken any  
12 depositions. And --

13 THE COURT: Anybody else other than Mr. Nolan?

14 MR. ROCHE: Nobody else.

15 THE COURT: All right. Where does -- Mr. Hurley,  
16 do you know where Mr. Nolan resides?

17 MR. HURLEY: He's local. He's in the U.S. I  
18 think he lives in New Jersey.

19 THE COURT: Okay. Do you want to take his  
20 deposition, Mr. Roche? Now's the time to tell me.

21 MR. ROCHE: Yeah, I do, Your Honor. The only  
22 caveat I would say is because we haven't received any  
23 documents yet in this case, I prefer -- I would like to  
24 reserve the ability to take his deposition once we have  
25 documents as well. If I'm --

1                   THE COURT: No, no, no, no. No, no, no, no, no.

2                   Your opposition to the preliminary injunction is due in five  
3                   days. Okay.

4                   MR. ROCHE: Understood.

5                   THE COURT: Do you want to take his deposition or  
6                   not?

7                   MR. ROCHE: Yes, Your Honor.

8                   THE COURT: You can serve -- you can serve a  
9                   subpoena with a request for documents and, you know, if you  
10                   can't resolve -- and hopefully you can get any issues  
11                   resolved about scope of your document request and all of  
12                   that. I require the parties to meet -- you know, try and  
13                   work that all out, but tell me now. Do you want Mr. Nolan's  
14                   deposition, yes or no?

15                   MR. ROCHE: Yes, as long as Mr. Hurley will agree  
16                   to work out the -- a time sometime before the 22nd, we can  
17                   work out a time to take that deposition. The 22nd of  
18                   December, which I believe was the deadline you set for  
19                   depositions.

20                   THE COURT: Well, we're going to -- I want that  
21                   deposition -- if the deposition is going to take place, it's  
22                   going to take place well before December 22nd.

23                   MR. ROCHE: Okay.

24                   THE COURT: The two of you -- let me put it this  
25                   way, Mr. Hurley. The sooner you can make Mr. Nolan

Page 30

1 available for the deposition, the better it will be for all  
2 of you. Okay?

3 MR. HURLEY: Understood, Your Honor.

4 THE COURT: And I'm going to limit the deposition  
5 to four hours.

6 MR. ROCHE: Understood.

7 THE COURT: And what documents is it that you  
8 want, Mr. Roche, with respect to Mr. Nolan's deposition?

9 MR. ROCHE: Any documents relevant to transfers  
10 out of 0xb1, the -- or any documents relating to the  
11 deployment of tokens by KeyFi -- Celsius, KeyFi, and Mr.  
12 Stone.

13 THE COURT: Well, what I'm going to do is the two  
14 of you need to meet and confer and try and agree on the  
15 scope of document production in connection with Mr. Nolan's  
16 deposition because, Mr. Roche, the sooner the deposition  
17 happens, the better because it takes time to get the  
18 transcript, and you're going to have to do designations and  
19 counter-designations.

20 Let me ask, Mr. Hurley, is Mr. Nolan -- well, you  
21 can -- if he's -- is he currently an employee of Celsius?

22 MR. HURLEY: I have to confirm, Your Honor. I  
23 know he was an employee of Celsius several months ago, but I  
24 actually don't know the answer to that question sitting here  
25 today.

1                   THE COURT: Okay. Well, if he is within the  
2 subpoena range of the Court, Mr. Roche, he can testify. And  
3 you want him to testify. You're going to have to use -- you  
4 can subpoena him for trial subpoena to testify at the  
5 hearing. And you can use a deposition, you know, as a  
6 deposition can be used under the rules. But you know, it  
7 may be that Mr. Hurley -- excuse me -- that Mr. Nolan is  
8 going to be a live witness at the hearing. So the two of  
9 you need to confer.

10                  Just to be clear in addition to -- you indicated,  
11 Mr. Roche, that you intended to have Mr. Stone's declaration  
12 in opposition, and you've indicated that the one deposition  
13 that you wish to take because you may want to call him as a  
14 witness at the hearing is Mr. Nolan, so I'm going to permit  
15 you that one deposition not to exceed four hours. And you  
16 and Mr. Hurley need to work out the schedule for that as  
17 promptly as possible, including what documents you wish to  
18 have produced in connection with that deposition.

19                  Anything else for the Court to deal with today?

20                  MR. HURLEY: Only regarding documents, Your  
21 Honor. I -- my hope is that Mr. Roche and I can just work  
22 this out and won't have to bother you with it. We've I  
23 think had some success on that front in the past.

24                  But I guess the scope of pre-preliminary  
25 injunction disclosures is getting a little broader than I

1 had anticipated. It's certainly possible we're going to ask  
2 him to give us some documents as well. We'll try and work  
3 it out, but I just wanted to give some fair warning to the  
4 Court, under the circumstances, we may be seeking some  
5 discovery.

6 THE COURT: All right. I will be unavailable for  
7 any discovery-related conferences until on or after December  
8 2, so that's pretty soon.

9 MR. HURLEY: As I said, we'll do our best to not  
10 have to bother you.

11 THE COURT: Okay. Anything else for today?

12 MR. HURLEY: Not from me, Your Honor.

13 MR. ROCHE: Not for Defendants.

14 THE COURT: All right. We are adjourned.

15 MR. HURLEY: Thank you.

16

17 (Whereupon these proceedings were concluded at  
18 10:41 AM)

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25

Page 33

1 C E R T I F I C A T I O N

2

3 I, Sonya Ledanski Hyde, certified that the foregoing  
4 transcript is a true and accurate record of the proceedings.

5

6 *Sonya M. Ledanski Hyde*

7 Sonya Ledanski Hyde

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20 Veritext Legal Solutions

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22 Suite 300

23 Mineola, NY 11501

24

25 Date: December 17, 2022

[&amp; - available]

Page 1

<b>&amp;</b>	<b>23</b> 1:23	<b>absence</b> 21:13	18:5
<b>&amp; 6:20</b>	<b>23rd</b> 6:3	<b>absolute</b> 23:24	<b>anticipated</b>
<b>0</b>	<b>260</b> 4:19	<b>absolutely</b> 18:22	10:13,18 32:1
<b>0xb1 30:10</b>	<b>28th</b> 13:11	19:5,14 20:10	<b>anybody</b> 7:21
<b>1</b>	17:19 20:5	<b>abundance</b> 14:4	28:13
	26:21 27:3	<b>access</b> 8:22	<b>apologies</b> 7:16
<b>100 15:9</b>	<b>3</b>	15:10	<b>apologize</b> 8:21
<b>10004 1:21</b>	<b>30</b> 3:4	<b>accurate</b> 33:4	16:13
<b>10011 4:6</b>	<b>300</b> 33:22	<b>action</b> 10:1	<b>apparently</b>
<b>10014 4:13</b>	<b>312-862-3555</b>	11:12	26:23
<b>10016 4:20</b>	6:22,24,25 7:2	<b>add</b> 24:17	<b>appear</b> 20:19,21
<b>1006 4:12</b>	<b>330</b> 33:21	<b>addition</b> 31:10	23:3
<b>10:00 1:24 6:3</b>	<b>360</b> 4:4	<b>adjourned</b>	<b>appearance</b> 6:6
<b>10:41 32:18</b>		32:14	6:18 7:14
<b>11 15:8</b>	<b>4</b>	<b>admission</b> 22:21	<b>appearances</b>
<b>111 4:5</b>	<b>4th</b> 16:7 17:2	<b>adv</b> 1:4	20:15
<b>11501 33:23</b>	20:11	<b>advance</b> 10:24	<b>appears</b> 21:15
<b>11th 15:19,20,23</b>	<b>5</b>	11:5 13:8 18:14	<b>appropriate</b>
<b>12151 33:7</b>	<b>5</b> 9:9,17 16:7	<b>adversary</b> 3:1	11:21 24:19
<b>12th 15:19,20,21</b>	17:19 23:12	9:7 15:7,13,14	<b>archer</b> 4:8
<b>17 33:25</b>	<b>50</b> 15:9	<b>ago</b> 30:23	<b>arguing</b> 10:19
<b>19th 4:5</b>	<b>5:00</b> 17:19 20:11	<b>agree</b> 29:15	<b>argument</b> 15:22
<b>2</b>	23:19	30:14	<b>arguments</b>
<b>2 32:8</b>	<b>5th</b> 9:10 26:21	<b>agreement</b> 21:9	15:12,17 18:12
<b>20 3:4</b>	<b>6</b>	21:13 22:6,7	<b>arrange</b> 25:14
<b>2001 5:3</b>	<b>600</b> 5:3	<b>ahead</b> 9:21	<b>assets</b> 11:20
<b>201 4:12</b>	<b>7</b>	17:11 19:24	<b>assistance</b> 25:13
<b>202-934-4040</b>	<b>700</b> 15:10	20:1	26:1
8:7	<b>75201</b> 5:4	<b>akin</b> 6:8,20 9:23	<b>assuming</b> 17:13
<b>2022 1:23 6:3</b>	<b>8</b>	<b>al</b> 1:12,15 3:2,2	27:10
33:25	<b>8th</b> 4:19 27:3	6:4,4	<b>attachment</b>
<b>2023 16:7</b>	<b>a</b>	<b>allow</b> 16:23 18:7	11:20
<b>22 23:19,25</b>	<b>a.m.</b> 6:3	<b>allows</b> 10:8	<b>attention</b> 24:24
<b>22-01139 1:4 3:1</b>	<b>ability</b> 20:6	<b>amount</b> 10:14	<b>attorneys</b> 4:4,11
<b>22-10964 1:3</b>	28:24	16:16	4:18 5:2
<b>22-1139 6:4</b>	<b>able</b> 8:14,22	<b>analysis</b> 11:19	<b>authorized</b>
<b>22nd 29:16,17</b>	22:21 25:19	14:3	27:19,22
29:22		30:24	<b>available</b> 10:11
		<b>anticipate</b> 8:17	14:23 25:22
		9:14 11:7,10	30:1

**[avenue - country]**

Page 2

<b>avenue</b> 4:19,19 5:3	<b>c</b>	<b>chief</b> 9:20 16:11 <b>circumstances</b> 32:4	<b>conference</b> 3:3 9:6 16:3,4 17:1 18:19 19:6,7,15 23:8,10 26:9
<b>aware</b> 27:20		<b>claims</b> 11:18	<b>conferences</b> 25:21 32:7
<b>b</b>		<b>clear</b> 14:17 16:22 25:1 31:10	<b>conferred</b> 25:24
<b>b</b> 2:1 5:10 <b>bachyrita</b> 5:9 <b>back</b> 27:6 <b>baker</b> 5:1 <b>bankruptcy</b> 1:1 1:19 2:3 11:13 <b>behalf</b> 6:20 7:17 8:10 9:23 11:10 <b>believe</b> 11:22 13:11 17:25 21:4 23:12,14 25:2 29:18 <b>believes</b> 25:5 <b>believing</b> 26:7 <b>best</b> 32:9 <b>better</b> 24:14 27:5,5 30:1,17 <b>beyond</b> 24:24 <b>bilter</b> 5:10 <b>block</b> 15:23 <b>blockchain</b> 10:9 <b>bother</b> 31:22 32:10 <b>botts</b> 5:1 <b>bowling</b> 1:20 <b>box</b> 22:4 <b>brian</b> 4:15 8:23 <b>brianna</b> 5:10 <b>brief</b> 17:20 <b>briefing</b> 17:21 <b>briefs</b> 17:13,14 25:17 <b>bringing</b> 24:23 <b>broader</b> 31:25	<b>clerk</b> 6:2,9,14,17 6:21 7:6,9,11,13 7:18,24 8:2,4,7 8:12,16,20,22 9:1,3 <b>closing</b> 18:12 <b>closings</b> 18:5 <b>coaching</b> 21:20 <b>colleague</b> 6:11 <b>colleagues</b> 13:3 24:11 <b>committed</b> 11:9 <b>communicates</b> 21:22 <b>compel</b> 25:12 <b>complaining</b> 27:22 <b>complete</b> 15:16 16:6 19:6,9,22 <b>completed</b> 14:22 16:6 19:5 23:19 23:23 <b>conceivable</b> 13:25 <b>concern</b> 26:22 <b>concerning</b> 11:14 27:17 <b>conclude</b> 26:4 <b>concluded</b> 32:17 <b>conducting</b> 15:2 <b>confer</b> 14:13 21:8 23:25 30:14 31:9		
			<b>core</b> 27:20 <b>cornell</b> 7:24 8:9 8:9,10,14,17,21 8:25 9:2 <b>correctly</b> 7:7 <b>could've</b> 24:5 <b>counsel</b> 9:13 <b>counter</b> 30:19 <b>counterclaims</b> 11:17 <b>countless</b> 15:7 <b>country</b> 33:21

[couple - either]

Page 3

<b>couple</b> 10:5 20:17 22:24 <b>course</b> 10:10,16 10:25 21:11 <b>court</b> 1:1,19 7:21 8:1,3 9:4 10:21 11:6,14 12:2,4,10,13,17 13:15,17,22 14:2,6,15,16 17:2 18:1,3,7,17 19:21,24 20:1,3 20:8,12,16,23 21:7 22:9,11,25 23:2,5,21 24:16 25:1,13 26:1,13 27:2,23 28:1,3 28:13,15,19 29:1,5,8,20,24 30:4,7,13 31:1,2 31:19 32:4,6,11 32:14 <b>court's</b> 12:17 16:4 19:4 22:1 26:1 <b>courtroom</b> 15:2 21:11,14 25:13 <b>cross</b> 10:11,12 10:16 14:19,23 18:17,20 23:9 <b>currently</b> 30:21	<b>days</b> 28:3 29:3 <b>deadline</b> 14:20 17:2,5 20:11 23:24 27:4 29:18 <b>deadlines</b> 27:10 <b>deal</b> 9:7 12:22 15:25 24:12 31:19 <b>dean</b> 6:7 20:24 <b>deanna</b> 7:4 <b>debtor</b> 1:10 <b>debtor's</b> 10:2 <b>debtors</b> 6:8,20 9:24 <b>december</b> 9:9,10 9:17 17:19 23:12,19,25 24:6,7,7 29:18 29:22 32:7 33:25 <b>decide</b> 14:14,17 14:22 25:8,19 <b>deciding</b> 25:9 <b>declarant</b> 18:16 <b>declarants</b> 14:7 14:19,22 27:12 <b>declaration</b> 12:20,20 13:13 13:24 14:1,12 19:1 20:5 26:20 28:10 31:11 <b>declarations</b> 10:5,15 17:6 18:15 26:20 <b>defendants</b> 1:16 7:17 9:9 17:16 32:13 <b>defense</b> 26:8	<b>defenses</b> 25:5 <b>delay</b> 8:21 <b>department</b> 4:10 <b>depending</b> 15:22 <b>deployment</b> 30:11 <b>deposition</b> 13:8 13:23 14:5 18:18 22:21,25 23:6,7 27:9 28:20,24 29:5 29:14,17,21,21 30:1,4,8,16,16 31:5,6,12,15,18 <b>depositions</b> 10:22 11:1,3,4 14:7,14,18,21 17:12 19:2,3 22:19,22 23:16 23:18 24:1,13 25:7,8 27:11 28:12 29:19 <b>deputy</b> 25:14 <b>designating</b> 18:19 <b>designations</b> 18:20,20 23:9,9 30:18,19 <b>development</b> 25:6 <b>direct</b> 12:19,21 13:1,6,19 18:14 <b>direction</b> 26:1 <b>disagreement</b> 24:19,22 <b>disclosures</b> 31:25	<b>discovery</b> 9:19 9:25 10:1,3 11:1 23:23 24:20 25:9,11,24 26:6 26:9,14,16,18 27:13 28:11 32:5,7 <b>discussed</b> 10:1 <b>discussion</b> 12:11 <b>dismiss</b> 9:8,11 11:15 23:12 <b>dispute</b> 16:10 24:24 25:10,19 25:24,25 <b>disputes</b> 25:11 <b>distance</b> 20:18 20:23 <b>distances</b> 20:21 <b>district</b> 1:2 <b>doc</b> 3:4 <b>docket</b> 9:10 <b>document</b> 19:17 22:3 29:11 30:15 <b>documents</b> 19:12 28:23,25 29:9 30:7,9,10 31:17,20 32:2 <b>due</b> 13:11 17:18 27:8 28:3 29:2	<b>e</b> <b>e</b> 2:1,1 4:1,1 6:1 6:1 8:22,23 33:1 <b>ecro</b> 2:5 <b>effect</b> 11:19 <b>either</b> 10:22 16:12,23 17:3,6 17:11 18:13,18 24:1,3
<b>d</b> <b>d</b> 6:1 <b>dallas</b> 5:4 <b>daniel</b> 5:15 <b>date</b> 17:2 33:25 <b>day</b> 9:11 15:17 25:15,15,21	<b>declarations</b> 10:5,15 17:6 18:15 26:20 <b>defendants</b> 1:16 7:17 9:9 17:16 32:13 <b>defense</b> 26:8			

## [elicit - holding]

Page 4

<b>elicit</b> 23:15	<b>expense</b> 20:19	<b>front</b> 31:23	<b>gorrepati</b> 5:11
<b>employee</b> 28:8 30:21,23	<b>expert</b> 11:23 12:6,9,12,24 13:1,1 18:24,25 20:5,7	<b>full</b> 7:6	<b>great</b> 7:9 20:18 20:21,23
<b>encompass</b> 17:20	<b>expert's</b> 12:25	<b>fully</b> 11:9 16:6 18:9 21:17	<b>green</b> 1:20
<b>engaged</b> 9:25	<b>explain</b> 12:13	<b>g</b>	<b>ground</b> 21:16
<b>enter</b> 26:10	<b>extent</b> 20:4	<b>g</b> 6:1	<b>guess</b> 11:25 14:2 18:7,22 26:15 26:21 31:24
<b>entered</b> 23:1	<b>extremely</b> 24:7	<b>gathering</b> 26:22	<b>gump</b> 6:8,20 9:23
<b>entirely</b> 21:12	<b>f</b>	<b>general</b> 26:11	<b>h</b>
<b>equities</b> 5:2	<b>f</b> 2:1 33:1	<b>generally</b> 19:15 26:3,5	<b>hand</b> 15:6
<b>estates</b> 20:20	<b>fact</b> 25:2	<b>getting</b> 8:19	<b>hang</b> 16:13
<b>et</b> 1:12,15 3:2,2 6:4,4	<b>facts</b> 16:9 22:15 24:21 25:6 26:7	31:25	<b>happen</b> 15:25 21:16
<b>eth</b> 12:11	<b>fails</b> 22:16	<b>give</b> 6:5,18 7:6 7:14 17:16,19	<b>happens</b> 30:17
<b>etherscan</b> 10:7	<b>fair</b> 32:3	18:3 32:2,3	<b>hard</b> 15:15
<b>events</b> 12:14	<b>faith</b> 25:4 26:6	<b>given</b> 27:10	<b>harrison</b> 5:12
<b>everybody</b> 9:5	<b>far</b> 17:23	<b>glenn</b> 2:2 9:5	<b>hauer</b> 6:20
<b>evidence</b> 10:7 10:14,19 11:7 12:19 15:16 19:9 23:1 26:23	<b>fashioned</b> 14:18	<b>go</b> 9:21 19:24 20:1 24:9	<b>hear</b> 7:5,15 9:11 9:16
<b>evidentiary</b> 9:16 14:19 18:6 23:13	<b>feld</b> 6:20	<b>going</b> 6:9 8:12 8:23,25 9:15	<b>heard</b> 23:12
<b>examination</b> 10:11 14:23 18:17	<b>file</b> 17:20	11:2 12:25 13:1	<b>hearing</b> 3:1 9:6 9:9,15,17 10:11
<b>examine</b> 14:19	<b>filed</b> 9:8,12 11:12 16:7 17:6 17:14,16	13:12,15,17,18 13:20 14:21	10:14,18,25
<b>exceed</b> 31:15	<b>find</b> 28:5	15:17,22 16:2,6	11:5,8 13:9
<b>excuse</b> 27:3 31:7	<b>firm</b> 20:10	16:16,19 17:2	14:10,19,24,25
<b>exhibit</b> 16:11 17:4	<b>first</b> 5:2 17:22 22:5 23:22 25:2	18:24,25 19:2 19:19 20:8	15:2,18,21 16:2
<b>exhibits</b> 16:23 16:24 17:3 21:24,25 22:1	<b>fishing</b> 26:4 28:5	23:18 24:2 25:7 25:8 26:19,22	17:21,24 18:6 19:8 22:14,17
<b>expect</b> 9:20 11:1 26:8	<b>five</b> 28:3 29:2	26:24 27:11	23:1,3,13,16
<b>expected</b> 16:5	<b>focused</b> 26:11	28:5 29:20,21	25:15 28:9 31:5
<b>expedition</b> 26:5 28:5	<b>follow</b> 24:23	29:22 30:4,13	31:8,14
	<b>foregoing</b> 33:3	30:18 31:3,8,14	<b>hearings</b> 15:9
	<b>form</b> 13:2	32:1	<b>heavy</b> 24:7
	<b>forward</b> 24:5,6 24:9	<b>good</b> 6:7,17,19 7:4,4 9:4,22	<b>helpful</b> 12:9
	<b>four</b> 30:5 31:15	25:4 26:6 27:6	<b>hi</b> 8:10
			<b>holding</b> 5:2 27:6

**[holidays - letter]**

Page 5

<b>holidays</b> 23:21 24:3 <b>hon</b> 2:2 <b>honor</b> 9:22 10:25 11:25 13:10 14:9 17:25 18:2,4 19:23 22:10,13 24:18 26:15 28:21 29:7 30:3 30:22 31:21 32:12 <b>honor's</b> 24:24 <b>hope</b> 15:16 31:21 <b>hopefully</b> 15:20 16:9 26:2 29:10 <b>hours</b> 30:5 31:15 <b>hurley</b> 6:11,12 6:19,19 9:18,21 9:22,23 10:24 11:25 12:3,4 13:2,5,10,16,21 13:24 14:13 17:18,22,25 18:4 19:23,24 19:25 20:2,4,13 20:17,24 21:2,5 21:7 22:10 24:11,16,18 26:15 28:15,17 29:15,25 30:3 30:20,22 31:7 31:16,20 32:9 32:12,15 <b>hybrid</b> 14:25 15:3 <b>hyde</b> 3:25 33:3,8	<b>i</b> <b>identified</b> 12:25 16:25 28:7 <b>identify</b> 6:23 7:1 7:3 8:8 16:10,17 17:10 <b>impeachment</b> 16:23 19:12,13 19:17,19 <b>important</b> 18:11 19:21 24:9,10 26:16 27:16 <b>include</b> 14:12 16:9 <b>included</b> 10:4 <b>including</b> 11:2 31:17 <b>indicated</b> 31:10 31:12 <b>indiscernible</b> 10:20 <b>individual</b> 24:25 28:6 <b>individuals</b> 22:23,24 27:19 <b>inevitably</b> 25:18 <b>information</b> 27:20 <b>initiation</b> 11:13 <b>injection</b> 15:18 <b>injunction</b> 3:4 9:12,14,21 10:2 10:4,25 11:5,8 11:19 12:14,18 12:24 13:9,20 14:8,24 15:13 16:1,12,18,25 17:8,15,21 22:16 23:14,16 24:9,20 25:3,6,9	26:8,12 27:8 29:2 31:25 <b>instance</b> 22:5 <b>intend</b> 12:23 16:11 <b>intended</b> 31:11 <b>intends</b> 13:6 <b>interest</b> 15:8,11 <b>interfere</b> 25:21 <b>interruption</b> 16:14 <b>introduce</b> 23:15 <b>involve</b> 22:15 <b>israel</b> 21:4,5 22:8 <b>israeli</b> 21:3 <b>issue</b> 11:11,15 12:11,14,15 26:7,17 27:15 27:18 <b>issues</b> 9:8 12:13 16:17 22:15,18 23:21 25:2,17 26:12 27:16 29:10 <b>item</b> 25:22	<b>judge</b> 2:3 7:19 9:3,5 <b>judges</b> 21:18,19 <b>justice</b> 4:10
			<b>k</b>
			<b>keyfi</b> 4:18 7:17 9:7 10:23 11:11 11:17,17 15:6 30:11,11 <b>kind</b> 10:7,17 24:22 <b>kirkland</b> 7:5 <b>know</b> 7:21 14:4 14:15 15:9,15 17:9 18:14,24 20:17 21:18 22:7 23:11,16 23:17,20 24:5,8 26:3,6,13 27:2,4 27:6,9 28:4,16 29:9,12 30:23 30:24 31:5,6
			<b>kyle</b> 4:17,22 7:13,16
			<b>l</b>
			<b>l</b> 7:8,8 <b>law</b> 4:4 <b>law360</b> 4:3 <b>lawyer</b> 21:17 <b>lawyers</b> 15:1 <b>lead</b> 9:19 <b>leave</b> 16:19 <b>ledanski</b> 3:25 33:3,8 <b>legal</b> 11:19 22:15 33:20 <b>legge</b> 5:13 <b>letter</b> 25:17

[light - p.m.]

Page 6

<b>light</b> 13:5 23:17	<b>mean</b> 14:20 16:8	15:21	<b>offered</b> 19:9	
<b>likelihood</b> 9:15	26:3	<b>need</b> 6:13 14:1,3	<b>offering</b> 10:15	
25:7	<b>meet</b> 14:13	14:22 16:10	11:7 23:7	
<b>limit</b> 30:4	29:12 30:14	17:10 19:2	<b>office</b> 8:9,10	
<b>limited</b> 1:12 3:2	<b>memorializing</b>	21:25 22:5	<b>oh</b> 27:25	
6:4 18:21	23:7	23:25 30:14	<b>okay</b> 6:9,14,21	
<b>line</b> 18:25	<b>merits</b> 22:18	31:9,16	6:25 7:6,9,18,23	
<b>list</b> 17:4 19:6	<b>met</b> 25:24	<b>needing</b> 8:17	7:24 8:1,2,12,16	
<b>listed</b> 17:4 19:14	<b>mg</b> 1:3,4 3:1	25:13	8:20 9:1 12:5	
19:18	<b>mike</b> 5:13	<b>needs</b> 21:24	14:16 18:1	
<b>listen</b> 25:18	<b>mineola</b> 33:23	<b>network</b> 1:8,12	22:11 28:4,19	
<b>listening</b> 8:18	<b>mini</b> 22:17	3:1 6:3	29:3,23 30:2	
<b>little</b> 31:25	<b>minutes</b> 7:22	<b>new</b> 1:2,21 4:6	31:1 32:11	
<b>live</b> 20:19 31:8	<b>mitch</b> 6:11,17	4:13,20 11:13	<b>old</b> 14:18 33:21	
<b>lives</b> 28:18	6:19 9:23	12:15 28:18	<b>once</b> 28:24	
<b>llc</b> 1:8 5:2	<b>moment</b> 17:16	<b>noah</b> 5:6	<b>onscreen</b> 21:17	
<b>local</b> 21:3 28:17	<b>monday</b> 14:13	<b>nolan</b> 28:6,13,16	<b>opening</b> 18:5,11	
<b>located</b> 20:25	<b>month</b> 22:20	29:25 30:20	18:13	
<b>long</b> 9:10 29:15	<b>months</b> 30:23	31:7,14	<b>openings</b> 18:8	
<b>look</b> 16:8,15	<b>morgan</b> 7:5,6	<b>nolan's</b> 29:13	<b>operate</b> 25:20	
17:17 27:24	<b>morning</b> 6:7,17	30:8,15	<b>opposition</b>	
<b>lot</b> 10:18	6:19 7:4,4 9:5	<b>notes</b> 14:16	12:24 13:7,11	
<b>ls</b> 7:9	9:22 28:9	<b>notice</b> 23:16	13:18,19,20	
<b>m</b>				
<b>m</b> 5:6	<b>motion</b> 3:3 9:8	<b>november</b> 1:23	14:11 16:12,19	
<b>madison</b> 4:19	9:11,12 10:2,5	6:3 17:18 27:3,3	17:7,15,18	
<b>mail</b> 8:23	11:15 16:19	<b>now's</b> 28:20	19:10 27:4,7,8	
<b>mailed</b> 8:23	23:11 24:20	<b>number</b> 6:4,23	28:3 29:2 31:12	
<b>making</b> 14:16	25:9 26:24	6:24 7:1,2 8:7	<b>order</b> 16:3 17:1	
18:13	27:18	15:22 17:10	18:5,19 19:6,7	
<b>management</b>	<b>motions</b> 25:12	18:21 22:15	19:15,18 23:8	
3:3 26:10	<b>moved</b> 9:16	<b>ny</b> 1:21 4:6,13	23:10 26:10	
<b>martin</b> 2:2	<b>n</b>			
<b>masumoto</b> 4:15	<b>n</b> 4:1 5:16 6:1	4:20 33:23	<b>orders</b> 16:4	
8:23	33:1	<b>o</b>		
<b>material</b> 10:7,14	<b>name</b> 7:6	<b>o</b> 2:1 6:1 33:1	<b>ought</b> 26:11	
<b>matter</b> 1:6	<b>narrow</b> 24:21	<b>objections</b> 23:9	<b>p</b>	
<b>matthew</b> 5:14	25:3	<b>obviously</b> 15:5	<b>p</b> 4:1,1 6:1	
	<b>necessary</b> 10:4	16:18 20:19	<b>p.a.</b> 4:17	
	11:4 14:14	<b>offer</b> 13:12,18	<b>p.m.</b> 16:7 17:19	
		16:11	20:11 23:19	

**[papers - recommend]**

Page 7

<b>papers</b> 13:11 14:11 18:8 24:4	<b>point</b> 25:4 <b>pointed</b> 12:1 <b>portugal</b> 21:1,5 22:8	<b>pretty</b> 18:24,25 32:8	23:6
<b>part</b> 10:6 11:20 12:12 21:6 22:17 27:14	<b>possibility</b> 26:18	<b>prevent</b> 18:12	<b>put</b> 14:11 18:8 19:1,1 22:2
<b>parties</b> 9:25 15:1,4,6,8,11,11 15:12 16:2 25:23 27:19 29:12	<b>possible</b> 14:1 20:20 31:17 32:1	<b>primary</b> 6:9,12	26:20 27:7,18 29:24
<b>party</b> 6:22,24,25 7:2 8:7 16:23 22:19 25:12 26:4,5,18	<b>potentially</b> 12:9	<b>principle</b> 14:25	<b>puts</b> 13:25
<b>pause</b> 6:15 7:11 8:5	<b>practice</b> 12:17	<b>prior</b> 11:12 14:10 22:13 28:8	<b>putting</b> 10:6 20:6 28:10
<b>pending</b> 11:16	<b>pre</b> 18:19 19:6,7 31:24	<b>privilege</b> 25:16	<b>q</b>
<b>people</b> 19:16 28:4	<b>prefer</b> 28:23	<b>probably</b> 8:18 13:13 25:14	<b>question</b> 9:13 15:11 20:14
<b>permit</b> 15:11 16:22 18:10 21:23 22:4,25 25:7,12 26:5 31:14	<b>preference</b> 21:10	<b>problem</b> 8:22 14:17 21:18,19	22:20 26:2 27:21 30:24
<b>person</b> 6:10 20:14	<b>prejudgment</b> 11:20	<b>procedures</b> 24:23 25:12	<b>questions</b> 20:2 22:12
<b>perspective</b> 10:3	<b>preliminary</b> 3:4 9:12,14,21 10:2 10:4,24 11:5,7 12:14,18,24 13:8,19 14:8,24 15:13,18 16:1 16:12,18,24	<b>proceed</b> 22:20	<b>quickly</b> 18:25 25:19
<b>peter</b> 5:9	17:7,15,21 22:16 23:13,15	<b>proceeding</b> 3:1 15:7,13,14	<b>quite</b> 24:21
<b>pi</b> 13:7	24:8,20 25:3,5,9 26:8,12 27:8 29:2 31:24	<b>proceedings</b> 11:13 32:17 33:4	<b>r</b>
<b>place</b> 29:21,22	<b>prepare</b> 16:2	<b>produced</b> 31:18	<b>r</b> 2:1 4:1 6:1 33:1
<b>plaintiff</b> 9:12	<b>prepared</b> 18:9	<b>production</b> 30:15	<b>raised</b> 17:23,24 26:18
<b>plaintiffs</b> 1:13	<b>preparing</b> 24:4	<b>profit</b> 27:17	<b>range</b> 21:21 31:2
<b>plan</b> 13:13	<b>present</b> 5:8 15:2 18:17 21:14 22:9	<b>prompt</b> 25:14	<b>rang</b> 15:9
<b>planning</b> 28:10	<b>presented</b> 12:19	<b>promptly</b> 12:25 20:9 31:17	<b>reach</b> 21:8 22:6 22:7 25:25
<b>plans</b> 17:9	<b>presume</b> 13:12	<b>property</b> 11:11 11:14	<b>read</b> 18:8,14
<b>please</b> 6:6,18,23 7:1,3,11,14 8:5	<b>pretrial</b> 16:3,3 17:1 19:15,18 23:8,10	<b>provide</b> 12:20 13:14 20:5	<b>realize</b> 23:20
<b>plenary</b> 9:25		<b>provided</b> 13:2 13:20 17:3	<b>really</b> 26:4,17
<b>plus</b> 21:12		<b>pto</b> 18:5	<b>reason</b> 26:6 27:6

[record - standpoint]

Page 8

<b>record</b> 6:18 7:14 9:23 33:4	<b>respect</b> 9:14 25:11 30:8	<b>saying</b> 23:18 <b>schedule</b> 13:3 17:17 24:13 26:14,19 27:10 31:16	<b>shiran</b> 21:2 <b>should've</b> 11:25 23:23
<b>recording</b> 6:2 6:15 7:11 8:5	<b>respond</b> 12:5	<b>scheduled</b> 24:2	<b>side</b> 10:12,13 12:19 17:3 18:18
<b>regarding</b> 3:3 31:20	<b>responsive</b> 26:2	<b>scheduling</b> 9:8 12:23 26:10	<b>signature</b> 33:7 <b>significance</b> 26:25
<b>related</b> 10:1 24:20 32:7	<b>richard</b> 4:8	<b>schottenstein</b> 5:6	<b>silverman</b> 5:14
<b>relates</b> 20:14 23:13	<b>right</b> 6:2,15,22 6:24 7:1,11,13 8:4,5 10:21 11:6 12:8 13:16,21 14:3 15:23	<b>scope</b> 24:19 27:23 28:15 32:6,14	<b>single</b> 15:17 <b>sitting</b> 30:24 <b>small</b> 22:4
<b>relating</b> 11:11 11:12 22:18 30:10	<b>road</b> 33:21	<b>screen</b> 21:23 22:2	<b>software</b> 10:8 <b>solutions</b> 33:20
<b>relation</b> 10:23	<b>roche</b> 4:17,22 7:16,16 10:12 10:15 11:2,6,9 12:6,8 13:12,18 14:6,9 18:1,2,23	<b>second</b> 12:2 16:13 18:3 20:14	<b>sonya</b> 3:25 33:3 33:8
<b>relevant</b> 11:14 11:18 23:15 26:7,12 27:16 27:20 30:9	<b>roche</b> 4:17,22 7:16,16 10:12 10:15 11:2,6,9 12:6,8 13:12,18 14:6,9 18:1,2,23	<b>see</b> 12:9 14:2 16:20 18:19	<b>soon</b> 32:8 <b>sooner</b> 23:25 24:12,13 29:25 30:16
<b>rely</b> 24:21	<b>remaining</b> 26:14	<b>seeking</b> 10:21 32:4	<b>sorry</b> 7:14 19:25 28:2
<b>remind</b> 20:24	<b>remind</b> 20:24	<b>seeks</b> 11:20	<b>sounds</b> 18:21 24:18
<b>reply</b> 17:16,20 26:21 27:1	<b>reply</b> 17:16,20 26:21 27:1	<b>seen</b> 13:24 26:24	<b>southern</b> 1:2
<b>report</b> 13:1	<b>report</b> 13:1	<b>separately</b> 8:13	<b>speak</b> 8:17
<b>request</b> 25:16 29:9,11	<b>request</b> 25:16 29:9,11	<b>series</b> 12:14	<b>speaking</b> 6:10
<b>require</b> 10:18 16:7,21 17:2 19:8,14 21:14 23:18 25:6,23 29:12	<b>require</b> 10:18 16:7,21 17:2 19:8,14 21:14 23:18 25:6,23 29:12	<b>serve</b> 29:8,8	<b>special</b> 24:22
<b>requires</b> 16:16 23:9	<b>roche's</b> 13:6	<b>set</b> 8:19 9:6,9 13:3 14:20	<b>specific</b> 10:1,3 <b>specifically</b> 16:17
<b>reserve</b> 14:2,5 28:24	<b>ron</b> 20:24	<b>15:18 16:18</b>	<b>spell</b> 7:7
<b>resides</b> 28:16	<b>ross</b> 5:3	<b>21:16 25:22</b>	<b>spends</b> 21:6
<b>resolve</b> 25:25 29:10	<b>rules</b> 16:5 21:16 24:25 31:6	<b>26:13,19 27:9</b>	<b>staff</b> 23:21
<b>resolved</b> 29:11	<b>running</b> 8:15	<b>29:18</b>	<b>stage</b> 15:15
	<b>s</b>	<b>setting</b> 23:24	<b>staked</b> 12:11
	<b>s</b> 4:1,15 6:1 7:8	<b>shara</b> 7:24 8:9 8:10,12	<b>standpoint</b> 19:4 22:2
	<b>sabo</b> 20:25	<b>share</b> 22:2 27:17	
		<b>sharing</b> 21:23	

**[start - understanding]**

Page 9

<b>start</b> 9:18	<b>supreme</b> 11:13 12:16	<b>thank</b> 6:14,21 7:9,10,18 8:4	<b>transcript</b> 23:8 30:18 33:4
<b>started</b> 7:20 9:3	<b>sure</b> 7:7 11:2 20:3 21:3,21 25:1	<b>transfers</b> 30:9	
<b>starting</b> 6:2		<b>transparency</b> 19:9	
<b>statement</b> 13:6 18:13	<b>t</b>	<b>travel</b> 20:18,21	
<b>statements</b> 18:11	<b>t</b> 33:1,1	<b>trial</b> 12:18,18 16:24,25 18:19	
<b>states</b> 1:1,19 4:10 8:11	<b>take</b> 10:21 11:1 11:3,4 13:8 14:5 14:6,18,21 17:11 22:21 23:6 24:2,2,13 25:8 26:5 27:11 28:19,24 29:5 29:17,21,22 31:13	19:6,7 22:18 31:4	
<b>stipulations</b> 16:9	<b>taken</b> 24:3 28:11,11	<b>trials</b> 21:12	
<b>stone</b> 1:15 3:2 4:18 5:15 6:4 7:17 9:7 10:22 11:2,10,17,23 12:12 13:7,13 14:13 15:6 30:12	<b>takes</b> 30:17	<b>tried</b> 16:18	
<b>stone's</b> 12:21 31:11	<b>taylor</b> 5:12	<b>tries</b> 22:2	
<b>stop</b> 12:4 28:1,1	<b>telephone</b> 20:22	<b>true</b> 33:4	
<b>straus</b> 6:20	<b>telephonically</b> 5:8	<b>trustee</b> 4:11 8:11	
<b>street</b> 4:5,12	<b>tell</b> 12:4 27:23 27:23 28:4,20 29:13	<b>trustees</b> 7:20	
<b>strong</b> 21:10	<b>template</b> 16:3,8 16:15,20	<b>try</b> 19:17 22:6 29:12 30:14 32:2	
<b>subject</b> 12:7	<b>testify</b> 11:10 12:24 22:3 31:2 31:3,4	<b>two</b> 7:9,22 16:20 19:1 20:2 21:11 23:25 25:16 26:20 27:15,17 29:24 30:13 31:8	
<b>submit</b> 27:4	<b>testifying</b> 19:8 21:15	<b>tx</b> 5:4	
<b>submitting</b> 20:11	<b>testimony</b> 12:9 12:21 13:1,7,12 13:18,19 18:6 18:18 21:22 22:7,21,25 23:7 23:14	<b>typically</b> 25:20	
<b>subpoena</b> 29:9 31:2,4,4		<b>u</b>	
<b>success</b> 31:23		<b>u.s.</b> 2:3 4:11 7:20 28:17	
<b>sufficiently</b> 17:11		<b>uday</b> 5:11	
<b>suite</b> 4:12 5:3 33:22		<b>unable</b> 25:24	
<b>support</b> 14:7 17:7,14		<b>unavailable</b> 32:6	
<b>supported</b> 14:7		<b>understand</b> 28:7	
<b>suppose</b> 10:16 10:16 14:4		<b>understanding</b> 22:14	

**[understood - zoom]**

Page 10

<b>understood</b> 19:20 20:13 22:10 23:4 24:15 26:25 29:4 30:3,6 <b>undertaking</b> 9:19 <b>united</b> 1:1,19 4:10 8:11 <b>unmute</b> 6:5,17 7:2,13 8:8 <b>unsatisfactory</b> 22:1 <b>use</b> 13:6 16:4,24 19:17,19 26:8 26:23 31:3,5 <b>ust</b> 7:22 <b>usually</b> 19:16 25:20	<b>wanted</b> 9:13 32:3 <b>wants</b> 24:11 <b>warning</b> 32:3 <b>way</b> 14:18 18:9 26:19 29:25 <b>we've</b> 26:19,25 31:22 <b>website</b> 16:5 <b>wednesday</b> 15:18,19 <b>wedoff</b> 5:16 <b>week</b> 17:19 23:22 <b>west</b> 4:5 <b>william</b> 4:22 <b>willis</b> 7:4,8,8,10 <b>wish</b> 13:7 14:6 17:12 23:6 31:13,17 <b>witness</b> 19:7 21:15,17,20,22 21:23,24 22:3,3 23:2,5 31:8,14 <b>witnesses</b> 9:20 10:5,6,11 15:1 15:12,22 17:10 18:21 20:15,17 20:20 21:10,14 21:19 <b>work</b> 16:16,21 19:2 20:9 24:12 26:13 29:13,16 29:17 31:16,21 32:2 <b>working</b> 8:18 <b>would've</b> 24:6 <b>written</b> 13:2	<b>x</b> <b>x</b> 1:5,11,17
		<b>y</b> <b>yeah</b> 7:24 21:1,5 27:14 28:21 <b>years</b> 21:11,12 <b>yep</b> 6:7 <b>york</b> 1:2,21 4:6 4:13,20 11:13 12:15
		<b>z</b> <b>zoom</b> 15:3,8,10 15:11 20:22 21:12,15,19 22:7 25:14